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Citations.

Cases

Supreme Court of the United States

OCTOBER TERM, 1952

No. 76

EDWIN E. HEALY and GORDON W. HARTFIELD,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONERS

Opinions Below

The opinion of the Tax Court of the United States is reported in 16 T. C. 200 and the opinion of the United States Court of Appeals is reported at 194 F. 2d 662.

Jurisdiction

Jurisdiction is invoked under U. S. C. Title 28, section 1254 (1) and section 1141 (a) of the Internal Revenue Code.

An order allowing a writ of certiorari to the United States Court of Appeals for the Second Circuit was filed on October 13, 1952.

Statement

The essential facts were stipulated in the proceeding before the Tax Court of the United States (R. 3, 4, 5, 6, 7). The proceedings were consolidated for trial before the Tax Court and for Review by the Court of Appeals.

Petitioners, both on a cash receipts and disbursements basis, filed their 1945 income tax returns and paid the tax shown to be due thereon on or about March 27, 1946, with the Collector of Internal Revenue for the 28th district of New York (R. 4).

At all times pertinent hereto, petitioner Healy was president and petitioner Hartfield was vice-president and treasurer of Hartfield-Healy Supply Co., Inc. a New York corporation (hereinafter called the corporation) and each petitioner owned 25 of the total of 52 shares of the corporation's common stock (R. 4).

During the year 1945, the corporation made cash salary payments of $8,081.40 to Healy and $8,136.30 to Hartfield. In December 1945, it accrued $21,918.60 as additional salary payable to Healy and $21,863.70 to Hartfield and charged against each of those accounts the amount of $5,042.70 which represented the amount of witholding tax paid by it in connection with each salary. On March 30, 1946, cash payments representing the balance of the 1945 accrued salaries were made to Healy and Hartfield in the respective amounts of $16,875.90 and $16,821.00. Each included in his individual income tax return for 1945 an amount of $30,000.00 as salary. During the year 1945, the corporation paid insurance premiums on the lives of Healy and Hartfield in the amounts of $1,131.25 and $1,044.20, respectively, which premiums were for petitioners' benefit (R. 4, 5).

The Commissioner, upon examination of the corporation's return for 1945, disallowed as deductions $10,000.00

of each petitioner's salary and the life insurance premiums paid for petitioners as excessive compensation (R. 5).

Similar disallowances were made for salaries paid in the years 1941, 1942 and 1943. The amounts are set out below (R. 4):

Year	Amounts Paid	Amounts Disallowed
1941	$28,000.	$ 8,000.
1942	62,000.	22,000.
1943	62,000.	2,000.

In addition the Commissioner disallowed as excessive compensation in 1943, the payment of life insurance premiums by the corporation for the benefit of the petitioners in the total amount of $2,175.45. The following deficiencies in tax and interest resulted from those disallowances (R. 4):

Year	Income Tax	Excess Profits Tax	Interest
1941	$1,523.64	$ 1,882.37	$ 476.14
1942	420.02	20,360.01	3,100.06
1943	221.07	-0-	11.63

The 1945 income tax return of the corporation showed a net loss of $45,232.75. Because of the disallowance of excessive compensation and several other minor adjustments, the corporation's net loss for 1945 was reduced to $21,741.29. The application of the net loss carry-back based upon that adjusted net loss resulted in the elimination of the 1942 and 1943 income tax deficiencies and the interest thereon and reduced the 1942 excess profits tax deficiency by the amount of $13,834.70 and the interest due thereon by the amount of $1,489.80. There remained unpaid by the corporation the following deficiencies in tax and interest (R. 5):

Year	Income Tax	Excess Profits Tax	Interest
1941	$1,523.64	$1,882.37	$ -0-
1942	-0-	6,525.31	1,465.33

On December 31, 1947, each petitioner advanced $5,250.00 to the corporation to be used to pay the remaining income and excess profits tax deficiencies, and on that same day, the corporation paid $9,931.32 out of those funds to the Collector of Internal Revenue at Buffalo, New York, in partial satisfaction of those deficiencies (R. 5).

On December 24, 1948, each petitioner paid $715.37 to the Collector of Internal Revenue at Buffalo in satisfaction of the balance due from the corporation on the deficiencies (R. 6).

At December 31, 1945, the balance sheet of the corporation showed total assets of $72,201.46 against liabilities of $98,709.66 (R. 6).

Neither the disallowance of compensation or the existence of transferee liability was contested by either petitioner.

The Tax Court of the United States determined that the amounts of excessive compensation used in satisfaction of petitioners' transferee liabilities were impressed with a trust from the time of receipt, therefore subject to a restriction on their use and not taxable income to the petitioners. The Court of Appeals for the Second Circuit reversed the Tax Court, deciding that the excessive compensation was received under a claim of right and without restriction as to its disposition (R. 13, 16, 17).

These cases come before this Court on an order granting a writ of certiorari to the United States Court of Appeals for the Second Circuit filed October 13, 1952 (R. 21).

Specification of Errors

The Court of Appeals for the Second Circuit erred in holding that amounts received by the petitioners as excessive compensation in the taxable year 1945, which the petitioners later refunded to the corporation in order to satisfy its tax liabilities, were received under a claim of right and without restrictions as to their disposition and were includible in their incomes for the taxable year 1945.

Summary of Argument

To the extent used by petitioners to satisfy their liabilities as transferees, the amounts of excessive compensation received by them from an insolvent corporation did not constitute taxable income to them. Such receipts were received in trust for creditors and the petitioners did not receive them under a claim of right without restriction as to their use. They did not have such control over the compensation that, as a practical matter, they could be said to have derived readily realizable economic value from it.

Under the principle of the annual accounting system, the fact and amount of excessive compensation was knowable as was the transferee liability and the amount thereof of the petitioners, at the end of the taxable year 1945 because neither the disallowance of compensation or the existence of transferee liability was contested.

ARGUMENT

The amounts of excessive compensation received by petitioners and used to satisfy the tax liability of Hartfield-Healy Supply Co., Inc. were not received under a claim of right and without restrictions as to their use.

The issue presented in this appeal is whether each of the petitioners is entitled to exclude from his taxable income from the year 1945, $5,681.03 of the total salary of $30,000.00 from Hartfield-Healy Supply Co., Inc., reported by each for that year. In auditing the income of that corporation for 1945, the Commissioner of Internal Revenue disallowed as a deduction, excessive salaries paid to each of the petitioners in the amounts of $10,000.00. This adjustment reduced the corporation's operating loss for 1945, as originally reported, so that the resulting carryback loss was not sufficient to eliminate 1941 and 1942 federal tax deficiencies. The corporation did not dispute this disallowance.

Thereafter, on December 31, 1947, each petitioner paid $5,250.00 to the corporation to be used by it to pay its 1941 and 1942 deficiencies and on the same day the corporation paid $9,931.32 out of those funds in partial satisfaction of those deficiencies. On December 31, 1948, each taxpayer paid $715.37 in satisfaction of the balance due from the corporation on its 1941 and 1942 deficiencies. The petitioners admitted their liability as transferees.

The corporation was insolvent in 1945. Both the Tax Court and the Court of Appeals are agreed on this (R. 11 and 15).

The Tax Court determined that the amounts of excessive compensation ultimately paid in satisfaction of their trans-

feree liabilities were not income to the petitioners because they were impressed with a trust from the time of their receipt (R. 13). The Court of Appeals in reversing the Tax Court held the petitioners received their 1945 salaries from the corporation under a claim of right, and without restriction as to their disposition, thus coming within the test outlined in *North American Oil Consolidated v. Burnet*, 286 U. S. 417, saying that:

> "* * * The fact that such salaries were reported on the individual tax returns as earnings or income would seem to be determinative of that question" (R. 17).

Obviously, the Court of Appeals has oversimplified the claim of right doctrine. The fact that a taxpayer reports income, the petitioners admit, shows that he claims the income but the claim of right doctrine enunciated in *North American Oil Consolidated* has two sides, one the claim and the other freedom from restrictions as to use. The reporting of income cannot determine, in fact can have little bearing on, the question of freedom from restrictions as to use. The answer to that question is not in the taxpayer's mind, it is in the circumstances under which he received the income. If restrictions are imposed, either by law or by agreement between the parties, the *North American Oil Consolidated* test is not met and the income is not taxable to the claimant.

The petitioners' position and that of the Tax Court is that by reason of the trust fund doctrine a restriction as to disposition existed from the very moment of receipt. The position of the Court of Appeals apparently is that a restriction did not come into existence until after the end of the taxable year.

Because the claim of right rule is a corollary of the annual accounting rule it becomes necessary to discuss first

the present facts in the light of the annual accounting principle.

The Court of Appeals in reversing the Tax Court said:

> "* * * The liability of the taxpayers as transferees must necessarily have awaited the determination as to the existence and amount of excessive salary payments. It was not fixed in 1945. Even though corporate insolvency were admitted, the liability of the officers did not exist until excessive payments were determined as a fact, and it was established that a deficiency in the corporate tax existed. * * *" (R. 17).

This conclusion is a denial of the annual accounting principle laid down in *Burnet v. Sanford & Brooks Co.* (1931) 282 U. S. 359. Essentially, the rule is that income must be computed annually as the net result of all transactions within the year. The practical application of the rule probably is expressed best in *Dixie Pine Products Co. v. Commissioner,* (1944) 320 U. S. 516 in these words:

> "* * * It has never been questioned that a taxpayer who accounts on the accrual basis may, and should, deduct from gross income a liability which really accrues in the taxable year. It has long been held that, in order truly to reflect the income of a given year, all the events must occur in that year which fix the amount and the fact of the taxpayer's liability for items of indebtedness deducted though not paid; and this cannot be the case where the liability is contingent and is contested by the taxpayer * * *."

See also *United States v. Anderson,* 269 U. S. 422, 440.

Reasonable compensation is a deductible item just as business expense, interest and certain taxes are deductible items. All of the events which determine reasonableness occur during the taxable year. Events occurring before or after the taxable year can have no effect on the question of whether compensation is reasonable. Excessive com-

pensation is a fact when paid, its discovery may come in a later year but it exists as a fact when payment is made. The respondent, in the present cases merely ascertained a fact already in existence. His uncontested disallowance is not a later fact which changed the nature of the original payment. If it were otherwise, then under *Dixie Pine Products Co. v. Commissioner, supra,* the income of the corporation for the year 1945 could not have been changed.

The only compensation properly accruable by the corporation in this case was reasonable compensation, hence the corporation's operating loss was overstated and the increased deficiencies were items properly accruable in 1945. The disallowance of compensation was not contested, consequently proper accounting required the accrual of the resulting increased deficiencies in 1945. Therefore at December 31, 1945, a deficiency in corporate taxes existed under the annual accounting principle. And since the disallowance was not contested, at December 31, 1945, the corporation being insolvent, by payment of such excessive salaries, made the petitioners its transferees. Because they did not contest that liability they became liable as transferees in 1945.[1]

In short, the petitioners cannot accept, and they ask the Court to reject, the respondent's one-sided view of the annual accounting principle. If it is perfectly proper to open a tax year for the corporation in order to reflect what the Court of Appeals refers to as "subsequent facts" (R. 16), it seems equally proper to open it for the individuals.

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[1] The fact that the corporation did not contest the disallowance of salaries and the petitioners did not contest their transferee liability distinguishes the present cases from *United States v. Lewis,* 340 U. S. 590. It also distinguishes them from *Commissioner v. Smith,* 6 Cir., 194 F. 2d 563. See: *F. A. Gillespie & Sons Co.* (Tax Court Memo) 3 T. C. M. 1073, 1078. Disagreement with a State Tax Commission over correct amount of additional tax does not prevent accrual.

Because the petitioners in 1945 were under a transferee liability and because the transferor was insolvent the trust fund doctrine is applicable. Petitioners are aware that the term, trust fund doctrine, has been used loosely in numerous decisions; that the doctrine has been erroneously applied in some cases and even rejected in some jurisdictions. But in New York State the doctrine has been adopted by the courts and extended by statute. The pioneer case is *Bartlett v. Drew*, 57 N. Y. 587, where the New York Court of Appeals said at page 589:

> "* * * It is a very plain proposition that the stock and property of every corporation is to be regarded as a trust fund for the payment of its debts, and its creditors have a lien and the right to priority of payment over any stockholder. (2 Story Eq. Jur. §1252)"

Later the same Court cited *Bartlett v. Drew* in *Cole v. Millerton Iron Company*, 133 N. Y. 164 and at page 168 said:

> "***The assets of a corporation are a trust fund for the payment of its debts upon which the creditors have an equitable lien both as against the stockholders and all transferees, except those purchasing in good faith * * *"

The only question that has arisen in the New York Courts concerning the doctrine is whether it applies before insolvency, there being no disagreement as to its application once insolvency exists. Furthermore the Federal Courts recognize that New York State follows the trust fund doctrine. See *Barr & Creelman Mill & Plumbing Supply Co. v. Zoller*, (C. C. A. 2nd) 109 F. 2d 924, 928 where the Circuit Court, in discussing the trust fund rule in New York, generally, and the case of *Reif v. Equitable Life Assurance Society*, 268 N. Y. 269, said:

> "* * * The court recognized the force of the trust fund rule, which had been invoked by the trial court, but declared it inapplicable to facts of the Rief case * * *"

See also *In re Crescent Box Mfg. Corporation*, 46 F. Supp. 140, 141 where the Court decided that the following conclusion of a bankruptcy referee was sound:

"The referee concluded that the property of an insolvent corporation constitutes a trust fund for the benefit of its creditors, and that no stockholder, director or officer could acquire any of the corporation's assets during such insolvency except as trustee for its creditors; § 15. New York Stock Corporation Law; Ward v. City Trust Co. of New York 192 N. Y. 61, 84 N. E. 585; Caesar v. Bernard, 156 App. Div. 724, 141 N. Y. S. 659 * * *"

To make even more certain that corporate creditors enjoyed full protection in the event of insolvency New York enacted Section 15 of the New York Stock Corporation Law (Appendix, *infra*). That section prohibits certain transfers by an insolvent corporation and, in the words of the section, a transfer in violation of the section "shall be void". Excessive compensation is a prohibited transfer under the section. See *Marine Trust Co. v. Tralles*, 147, Misc. 426, 263 N. Y. Supp. 750; distinguishing *Feigenbaum v. Narragansett Stables Co.*, 127 Misc. 114, 215 N. Y. Supp. 328, aff'd 219 A. D. 729, aff'd 245 N. Y. 628; *Commissioner v. Renyx* (Second Cir.) 66 F. 2d 260.

Thus in New York, in addition to the trust fund doctrine, there is a statutory prohibition against the payment of excessive compensation by an insolvent corporation and in the very words of the statute the payment "shall be void". The words void and voidable frequently are used incorrectly but when a statute contains the word "void" we must presume that the word void and not voidable is meant. And it seems clear that the purpose of Section 15 of the Stock Corporation Law was to prevent the vesting of any beneficial title in a transferee under a prohibited transfer.

As to the application of local law in this tpye of case *Mertins Law of Federal Income Taxation*, Vol. 9 § 53.06 states:

> "General Nature of Transferee Liability. The transferee provisions do not impose any new obligations upon the transferee of property of a taxpayer; they merely permit collection from him by a summary procedure of his existing liability in law or in equity. In other words, it is the liability of the transferee that could have been enforced by appropriate remedy in the federal courts which is enforced under the transferee provisions. *Thus, the nature and extent of a transferee's liability must be determined by the settled principles of the common law and federal and local statutes* * * *" (Emphasis supplied)

It should be noted that in the *Barr & Creelman, supra*, case and in *Crescent Box Manufacturing Corporation, supra*, recourse was had to local law although a federal law, the Bankruptcy Act, was involved. See also *Harwood v. Eaton*, 68 F. 2d 12 (C. C. A. 2d), cert. den. 292 U. S. 636.

So it seems fair to conclude that in order to determine what interests or rights have been created, reference to local law is necessary and then, in order to determine what interests or rights should be taxed, reference must be had to the federal law. In the present cases the interest or right created is the primary question because if the petitioner's rights in the excessive compensation are only those of trustees they may not be taxed as beneficial owners. Petitioners present this argument relative to local law because they believe that it is necessary to show that the trust fund doctrine is an accepted principle in New York State. If the trust fund doctrine had been rejected in New York there is serious doubt in the petitioners' minds that the doctrine would be available for federal tax purposes to a New York resident.

But the doctrine has been adopted and extended through Section 15 of the Stock Corporation Law and is available to petitioners for the purpose of determining their interest in the excessive compensation. Their interest, even to those most critical of the doctrine, can only be that of trustees in the specific case of payment by an insolvent corporation, insolvent at the time of payment, of excessive compensation to its controlling stockholders. That is the specific case here and must not be obscured or confused by a profusion of references to dissimilar facts and decisions.

For example, in respondent's memorandum on petition for certiorari, *Fleischer v. Commissioner*, 158 F. 2d 42 (C.A. 8th) is stated to involve the precise question here presented, and the Court of Appeals directs attention to the case (R. 16). The cited case did *not* involve the question which we ask this Court to answer. In the *Fleischer* case, the transferor corporation *was not insolvent before or after* the salary payment. Its capital was impaired but its assets exceeded its liabilities to creditors before and after the payments. Incidentally, the *Fleischer* case was decided under the *Dobson* rule. As to the reference of the Court of Appeals to *Pittman v. Commissioner*, 14 T. C. 449, petitioners can only point out that respondent specifically called the attetnion of Judge Black to that case before the decision of the Tax Count in the present cases was rendered. Finally *United States v. Lewis*, *supra*, must be distinguished on three grounds, the money received was not subject to the trust fund doctrine, the question of ownership of the funds was a private controversy, as in *National City Bank v. Helvering*, (C.A. 2d) 98 F. 2d 93, 96, and *Rutkin v. United States*, 343 U. S. 130, and finally, as pointed out before, the present petitioners never contested their liability to the Treasury.

In view of the foregoing it seems clear that the petitioners, at the end of 1945, were under an existing liability for federal income taxes of an insolvent corporation and that under the trust fund doctrine and the New York State statutes, they received the excessive compensation paid to them, in trust for creditors. Consequently, the amounts thereof used to satisfy the corporation's tax liability must be excluded from their taxable incomes for 1945.

Petitioners, as a practical matter, did not receive readily realizable economic value, in 1945, from the compensation received by them to the extent of the amounts paid in satisfaction of their transferee liabilities.

The Stipulation of Facts shows that both petitioners were on a cash receipts basis (R. 4), that Hartfield-Healy Supply Co., Inc. made cash salary payments of $8,081.40 to petitioner Healy and $8,136.30 to petitioner Hartfield during the year 1945, that in December, 1945, the corporation accrued $21,918.60 as additional salary payable to Healy and $21,863.70 as additional salary payable to Hartfield and charged against each of these accrued amounts the amount of $5,042.70 which represented the amount of withholding tax paid by it in connection with each salary (R. 4, 5). On March 30, 1946, cash payments representing the balance of the 1945 accrued salaries were made to Healy and Hartfield in the respective amounts of $16,875.90 and $16,821.00 (R. 5). The corporation had a surplus deficit at December 31, 1945, of $31,708.20 (R. 6) and was found to be insolvent by both the Tax Court of the United States and the United States Court of Appeals for the Second Circuit (R. 11 and 15). Neither petitioner owned more than 50% of the stock of Hartfield-Healy Supply Co., Inc. (R. 4).

On the basis of the above factual situation it is obvious that the realizable economic value in 1945 of what petition-

ers received could not have exceeded the total of cash payments, withholding taxes paid for them and the fair market value of the notes received by them.

The petitioners concede that it must be assumed that they received notes for $16,875.90 and $16,821.00 respectively and that these notes were treated as payment and not merely evidence of debts: See *Schlemmer v. U. S.*, 94 F. (2d) 77 (C.A. 2nd 1938) (notes as evidence of a debt are not income to recipient in year of receipt). They further concede that the question of fair market value of such notes must be based solely on the existing record. It is respectfully submitted however, that on the basis of that record, these notes could not have had a fair market value in excess of $3,602.34 and $3,586.36 respectively, or a total of $7,188.70. Assuming that notes were given to the petitioners in the total sum of $33,696.90, the liabilities owed on December 31, 1945 to persons other than the petitioners would be:

Accounts Payable	$11,8[illegible]7.83
Notes Payable	33,000.00
Accrued Expenses	12,286.58
Accrued Federal Income Taxes	7,888.35
Total Liabilities	$65,012.76

To apply against these liabilities the corporation had total assets of $72,201.46 (R. 6). If all the assets of the corporation could be converted into cash (which is highly unlikely considering Accounts Receivable were $11,837.83 and Inventories were $37,682.03) there would be only $7,188.70 to apply against petitioners' notes. Under these circumstances it is completely unrealistic to conclude that, conceding receipt of notes by the petitioners in 1945, they as a practical matter derived readily realizable economic value in the amount of the face value of the notes, $33,696.90.

The petitioners wish to make clear to the Court that in making this argument they are not attempting to raise a new issue or advance a new theory. They seek only to demonstrate to the Court that the Tax Court of the United States in *Hartfield v. Commissioner*, 16 T.C. 200 reached ~~received~~ the correct conclusion, namely that the portions of the excessive incomes which were ultimately paid in satisfaction of petitioners transferee liabilities were not includible in their income for the year 1945.

Conclusion

The decisions of the United States Court of Appeals for the Second Circuit should be reversed and the decision of the Tax Court of the United States should be affirmed.

November, 1952.

Respectfully submitted,

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APPENDIX

STATUTES INVOLVED

Internal Revenue Code:

Sec. 22. Gross Income.

(a) General Definition. "Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service . . . of whatever kind and in whatever form paid, . . . also from . . . dividends. . . .

(26 U. S. C. 1946 ed., Sec. 22)

Sec. 42 (As amended by Sec. 114, Revenue Act of 1941, c. 412, 55 Stat. 687). Period in which items of gross income included.

(a) General Rule. The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under Section 41, any such amounts are to be properly accounted for as of a different period. . . .

(26 U. S. C. 1946 ed., Sec. 42)

Sec. 311. Transferred Assets.

(a) Method of Collection. The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) Transferees. The liability, at law or in equity, of a transferee of property of a taxpayer in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this chapter.

(26 U. S. C. 1946 ed., Sec. 311)

Section 15. New York Stock Corporation Law.

§15. Prohibited transfers to officers, stockholders, directors or creditors. No corporation which shall have refused to pay any of its notes or other obligations, when due, in lawful money of the United States, nor any of its officers or directors, shall transfer any of its property to any of its officers, directors or stockholders, directly or indirectly for the payment of any debt, or upon any other consideration than the full value of the property paid in cash. No conveyance, assignment or transfer of any property of any such corporation by it or by any officer, director or stockholder thereof, nor any payment made, judgment suffered, lien created or security given by it or by any officer, director or stockholder when the corporation is insolvent or its insolvency is imminent, with the intent of giving a preference to any particular creditor over other creditors of the corporation, shall be valid, except as to any rights or interests which may be acquired thereunder by any person without notice or reasonable cause to believe that such conveyance, assignment, transfer, payment, judgment, lien or security would effect a preference, and except also that laborers' wages for services shall be preferred claims and be entitled to payment before any other creditors out of the corporation assets in excess of valid prior liens or incumbrances. No corporation formed under or subject to the banking, insurance or railroad law shall make any assignment in contemplation of insolvency. Every person receiving by means of any such prohibited act or deed any property of a corporation shall be bound to account therefor to its creditors or stockholders or other trustees. No stockholder of any corporation shall make any transfer or assignment of his stock therein to any person in contemplation of its insolvency. Every transfer or assignment or other act done in violation of the foregoing provisions of this section shall be void, except as hereinbefore provided. Every director or officer of a corporation who shall be concerned in the making of any conveyance, assignment, transfer or payment, the suffering of any judgment or the creation of any lien or the giving of any security by such corporation when it is insolvent or its insolvency is imminent, with the intent of giving a preference to any particular creditor over any of the other creditors of the corpo-

ration or who shall violate or be concerned in violating any other provision of this section shall be personally liable to the creditors and stockholders of the corporation of which he shall be director or an officer to the full extent of any loss they may respectively sustain by such violation.

(1851)